

**International Longshoremen's Association, Local 1291, AFL-CIO and Holt Cargo Systems, Inc. Local Lodge 724 of the International Association of Machinists and Aerospace Workers, AFL-CIO and Holt Cargo Systems, Inc.** Cases 4-CD-781-1 and 4-CD-781-2

January 28, 1991

**DECISION AND DETERMINATION OF DISPUTE**

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

The charges in this Section 10(k) proceeding were filed on February 22, 1990, by the Employer, Holt Cargo Systems, Inc., alleging that the Respondents, International Longshoremen's Association, Local 1291 (Local 1291 ILA) and Local Lodge 724 of the International Association of Machinists and Aerospace Workers (Local 724 IAM), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees represented by one union rather than to employees represented by the other union. The hearing was held on June 7, 1990, before Hearing Officer Timothy J. Brown. The Employer, Local 1291 ILA, and Local 724 IAM filed posthearing briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

**I. JURISDICTION**

The Employer, a Delaware corporation, is engaged in warehousing, trucking, and stevedoring at Delaware River piers in Philadelphia, Pennsylvania. During the calendar year preceding the hearing, the Employer derived gross revenues in excess of \$1 million and purchased and received goods valued in excess of \$50,000 directly from points located outside the State of Pennsylvania. The parties stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Local 724 IAM and Local 1291 ILA are labor organizations within the meaning of Section 2(5) of the Act.

**II. THE DISPUTE**

*A. Background and Facts of Dispute*

Holt Cargo Systems, Inc., the Employer, began operations at the Packer Avenue Marine Terminal in Philadelphia, Pennsylvania, April 1, 1989, and has, since then, assigned the maintenance and repair of me-

chanical equipment to mechanics represented by Local 724 IAM. Holt is a party to an April 1, 1988, to October 1, 1991 collective-bargaining agreement with Local 724 IAM. Holt is also a member of the Philadelphia Marine Trade Association (PMTA), a multiemployer bargaining association, which has an October 1, 1989, to November 30, 1990 collective-bargaining contract with Local 1291 ILA. Immediately prior to Holt's takeover of operations in April 1989, the Packer Avenue terminal was operated by Delaware River Stevedores, Inc. (DRS). As a result of an agreement reached between Local 724 IAM and Local 1291 ILA in 1976, the automotive work on equipment such as forklifts and trucks used on the piers was divided between employees represented by both Unions, while mechanics represented by Local 724 IAM performed the work of maintaining and repairing heavy equipment such as cranes, shipping containers, chassis, and trailers, including refrigerated units.<sup>1</sup> Holt also operates a terminal in Gloucester City, New Jersey, across the Delaware River from the Packer Avenue facility. In a jurisdictional dispute that included Local 724 IAM and Local 1291 ILA involving similar work at the Gloucester City facility, the Board awarded the maintenance and repair of Kocks container cranes, containers, chassis, and trailers to employees represented by Local 724 IAM.<sup>2</sup> When Holt began operating the Packer Avenue facility, it did not hire any employees of DRS. Rather, Holt transferred mechanics represented by Local 724 IAM from the Gloucester City facility to the Packer Avenue facility to perform the work now in dispute.

*B. Work in Dispute*

The disputed work involves the maintenance and repair of mechanical equipment at the Packer Avenue Marine Terminal in Philadelphia, Pennsylvania.<sup>3</sup>

*C. Contentions of the Parties*

The Employer and Local 724 IAM contend that the work in dispute should be assigned to employees represented by Local 724 IAM based on their longstanding collective-bargaining relationship; the area and in-

<sup>1</sup> See *Machinists Local 724 (Delaware Stevedores)*, 297 NLRB 1036 (1990).

<sup>2</sup> *Teamsters Local 158 (Holt Cargo)*, 293 NLRB 917 (1989).

<sup>3</sup> By letter to the PMTA dated December 29, 1989, Local 1291 ILA claimed that "the mechanics" employed by Holt at the Packer Avenue facility were covered by the agreement between Local 1291 ILA and PMTA. The letter complained that mechanics represented by IAM were in fact "performing work" for Holt, thereby depriving mechanics represented by Local 1291 ILA of this work. The notice of hearing described the work in dispute as "[t]he maintenance and repair of mechanical equipment, container cranes, shipping containers, chassis and trailers, including refrigerated units, for Holt Cargo Systems, Inc. at the Packer Avenue Marine Terminal in Philadelphia, Pennsylvania." At the hearing, the parties stipulated that the work Local 1291 ILA was seeking for its members was limited to the maintenance and repair of all mechanical equipment at the Packer Avenue Marine Terminal in Philadelphia. This type of equipment includes forklifts, top-picks, and yard hustlers. Therefore, the work of maintaining and repairing container cranes, shipping containers, chassis, and trailers is not in issue in this proceeding.

dustry practice; the Employer's preference for and past practice of using Local 724 IAM-represented mechanics at its marine terminal and warehouse facility located in New Jersey; the skills and expertise possessed by Local 724 IAM-represented mechanics; and the economy and efficiency of operation. Local 724 IAM asserts that, in addition to these factors, an award of the work in dispute to employees represented by Local 1291 ILA would result in loss of employment for some, and perhaps all, of the employees currently performing the work at the Packer Avenue Marine terminal.

Local 1291 ILA contends that the employees it represents have a contractually based claim to the work in dispute<sup>4</sup> and possess the necessary skills, and that these factors, combined with loss of employment for its members, economy, efficiency, safety, past practice, and area practice, as well as Local 724 IAM's acquiescence in the past assignment of a portion of the work disputed to mechanics represented by Local 1291 ILA, require an award of the work to employees it represents.

#### D. Applicability of the Statute

Before the Board may proceed with a determination of dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed on a method for the voluntary adjustment of the dispute.

By letter to the PMTA dated December 29, 1989, Local 1291 ILA claimed that the work of mechanics employed by Holt at the Packer Avenue facility is covered by the Local 1291 ILA and PMTA agreement and demanded an immediate grievance meeting relating to Holt's assignment of mechanics' work to members of the IAM. By letter dated January 8, 1990, the PMTA responded that the matter involved a union jurisdictional dispute which could not be resolved through the PMTA-ILA grievance machinery. By letter to the

PMTA dated January 23, 1990, Local 1291 ILA informed the PMTA that it intended to exercise all lawful means of self-help available to it to resolve this controversy unless PMTA and Holt Cargo systems agreed to submit this matter to the grievance arbitration machinery.

By letter to Holt dated February 14, 1990, Local 724 IAM informed Holt that pursuant to its contract, mechanical work being performed on containers, trailers, power chassis, and material handling equipment at the Packer Avenue facility is within its jurisdiction and that Local 724 IAM "intends to take whatever action is necessary to protect our membership including economic action."

The parties stipulated that there exists no agreed-on method for the voluntary adjustment of the work which would bind all the parties. Based on the February 14, 1990 letter from Local 724 IAM threatening "economic action," we find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred<sup>5</sup> and that there exists no agreed-on method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that the dispute is properly before the Board for determination.

#### E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

##### 1. Certifications and collective-bargaining agreements

Neither Local 1291 ILA nor Local 724 IAM has been certified by the Board as the collective-bargaining representative of any of the employees involved in this dispute. Holt Cargo Systems, Inc. has had a collective-bargaining relationship with Local 724 IAM for over 30 years. In its current agreement, effective April 1, 1988, until October 1, 1991, Holt recognizes Local 724 IAM as the "sole and exclusive bargaining agency" for all of its employees in the classifications listed in

<sup>4</sup>Local 1291 ILA alleges that the collective-bargaining agreement between it and the Philadelphia Marine Trade Association (PMTA), to which Holt belongs, encompasses the work in dispute.

According to Local 1291 ILA, the parties to the PMTA-ILA agreement acknowledged the existence of a work-sharing arrangement between Local 1291 ILA and Local 724 IAM at the Packer Avenue facility by specifically including in their collective-bargaining agreement the following language: "Adding 'Container Maintenance and Repairmen's' to the above heading is made with the following understandings: (i) ILA recognizes that it will not change existing jurisdiction—Example: Packer Avenue Marine Terminal." This work-sharing arrangement originated in May 1976 when a company called the Delaware Operating Company (DOC) operated the Packer Avenue Marine Terminal. At that time, DOC entered into an agreement with ILA Local 1291 and Local 724 IAM that "jobs [would] be assigned without regard to previous practices in the port and that all work [would] be shared fairly and equitably between the two (2) unions in this unit." In July 1988, DOC was merged with the I.T.O. Corporation and the surviving corporation continued under the name of Delaware River Stevedores, Inc. (DRS). DRS continued in full force and effect the work-sharing agreement that had been entered into by its predecessor. Holt, however, was a stranger to this agreement and did not abide by it when it assumed operation of the pier on April 1, 1989.

<sup>5</sup>*Teamsters Local 158 (Holt Cargo)*, supra at 919 re Case 4-CD-640. In view of this finding which properly places the dispute before the Board for determination, we need not decide whether Local 1291 ILA's December 29, 1989 demand for a grievance meeting or its January 23, 1990 assertion that it would exercise "all lawful means of self-help available" to resolve the controversy threatened unlawful conduct.

As to the reasonable cause finding, we note that none of the parties dispute that there is reasonable cause to believe that a violation of Sec. 8(b)(4)(D) has occurred.

“Schedule A” attached to the agreement.<sup>6</sup> Holt is also a party to an agreement with Local 1291 ILA through its membership in the Philadelphia Marine Trade Association (PMTA). PMTA is the collective-bargaining representative for an association of employers engaged in the warehousing and shipping industry in the Port of Philadelphia and vicinity. PMTA is a party to the “Mechanics”, Lockermen’s, Gearmen’s, Crane Operator’s, Truck Drivers’ and Container Maintenance and Repairmen’s Agreement, Local 1291 and 1694,” effective October 1, 1986, to November 30, 1990. This agreement covers

all mechanics, lockermen and gearmen, who work on longshoremen’s equipment, including those who do rigging, crane operators, and truck drivers who haul longshoremen and stevedoring equipment and container Maintenance and Repairmen who are employed by members of the Philadelphia Marine Trade Association.

Holt does employ ILA mechanics at Packer Avenue pursuant to paragraph 8(c) of the PMTA-ILA agreement.<sup>7</sup> Holt has observed this portion of the PMTA-ILA agreement by employing a Local 1291 ILA-represented mechanic for each vessel that is being worked on at the Packer Avenue Terminal. These Local 1291 ILA-represented mechanics work on and around the vessels. The other mechanics—represented by Local 724 IAM—work out of the shop where work is performed on mechanical equipment. It was this shop work which previously had been shared by mechanics employed by Delaware River Stevedores, Inc. and represented by Local 1291 ILA and Local 724 IAM.

To support its claim that the collective-bargaining agreement favors an assignment of the work in dispute to employees it represents, Local 1291 ILA relies on the following introductory language in its PMTA agreement effective October 1, 1986, to September 30, 1989: “Adding ‘Container Maintenance and Repairmen’s’” to the title of the above heading is made with the following understandings: (1) ILA recognizes that it will not change existing jurisdiction—Example: Packer Avenue Marine Terminals.” Local 1291 ILA contends that this language in the PMTA-ILA agreement was intended to acknowledge the work-sharing

arrangement between Local 1291 ILA and Local 724 IAM (which existed pursuant to a side agreement between those parties and the Delaware Operating Company and recognized by its successor, Delaware River Stevedores) at the Packer Avenue Marine Terminal prior to April 1, 1989.

We find, however, that this language is no more than an acknowledgement by Local 1291 ILA that it would not attempt to expand its jurisdiction at Packer Avenue to include container and chassis repair, based on the additional language in the title. The language does not purport to bind Holt or any other member of PMTA to any previous arrangement between Local 724 IAM and Local 1291 ILA. That work-sharing arrangement derived solely from the May 4, 1976 agreement entered into by the Delaware Operating Company, Local 724 IAM and Local 1291 ILA, effective April 20, 1976. Because both Local 724’s and Local 1291’s agreements otherwise contain provisions arguably covering the work in dispute, we find that the factor of collective-bargaining agreements does not favor an award of the disputed work to either group of employees.

## 2. Employer preference

Holt prefers to use its employees represented by Local 724 IAM to perform the maintenance and repair of mechanical equipment at the Packer Avenue Marine Terminal rather than employees represented by Local 1291 ILA. Employer preference favors an award of the disputed work to the employees represented by Local 724 IAM.

## 3. Employer past practice

When Holt began operation of the Packer Avenue Marine Terminal on April 1, 1989, it assigned all maintenance and repair of mechanical equipment to Local 724 IAM-represented mechanics who were transferred from its Gloucester City, New Jersey terminal, located 3 miles away. Holt has always utilized Local 724 IAM-represented employees to perform its mechanical equipment maintenance and repair work and currently employs approximately 8 to 10 Local 724 IAM-represented mechanics at the Packer Avenue Marine Terminal. Based on the Employer’s practice prior to the instant dispute, we find that this factor favors an award of the work in dispute to employees represented by Local 724 IAM.

## 4. Area practice

Both ILA- and IAM-represented mechanics perform maintenance and repair work for various stevedoring companies throughout the Port of Philadelphia. Therefore, area practice does not favor an award of the disputed work to employees represented by either Union.

<sup>6</sup> “Schedule A” lists the following job classifications: first class and “B” truck mechanics; first class and “B” trailer mechanics; first class and “B” fork lift mechanics; first class and “B” maintenance mechanics; tire repairmen, and utility mechanic or trainee. There is no geographic limitation contained in the agreement.

<sup>7</sup> That provision reads in pertinent part:

When mechanical equipment is being used by longshoremen in the loading and/or discharging operations at a terminal on vessels during overtime operations mechanics will be assigned to cover such operations as follows:

A minimum of one mechanic when each ship is working.

Mechanics who are assigned to a ship will start one hour before the ship in order to service equipment. This applies to an 8 AM start, unless the equipment is fuel serviced the day before.

### 5. Economy and efficiency

The Local 724 IAM-represented mechanics are regular full-time employees and may be employed to work staggered shifts and days. Local 1291 ILA-represented employees are hired on a casual basis, from 8 to 12 a.m. and 1 to 5 p.m. The Employer observes that the IAM-represented employees, but not those represented by the ILA, provide Holt with a full-time work force and continuity of labor that is available to handle repairs at any time of day. Further, when Holt needs additional mechanics at Packer Avenue, it can bring IAM-represented mechanics from Gloucester City, and then send them back when they are no longer needed. We find that the factor of economy and efficiency of operation favors an award of the disputed work to employees represented by Local 724 IAM.

### 6. Relative skills

Mechanics represented by Local 724 IAM have exclusively performed all maintenance and repair on Holt's mechanical equipment at its Gloucester, New Jersey, facility for over 35 years. This equipment is identical to that at the Packer Avenue Marine Terminal. Mechanics represented by Local 1291 ILA have performed similar services at the Packer Avenue Marine Terminal from 1976 through March 31, 1989, and at other piers in Philadelphia and southern New Jersey. Therefore, relative skills do not favor an award of the disputed work to employees represented by either Union.

### 7. Gain or loss of employment

Employees represented by Local 724 IAM are currently performing the work in dispute at the Packer

Avenue Marine Terminal. An award of the work in dispute to individuals represented by Local 1291 ILA would result in the loss of employment for some, and perhaps all, of the employees currently performing the work. Conversely, an award of the disputed work to employees represented by Local 724 IAM would have no discernible impact on Local 1291 ILA members since they are not currently employed by Holt and have not been utilized by Holt to perform the work in dispute since Holt began operations at the Packer Avenue Marine Terminal. We find that this factor favors Local 724 IAM-represented employees.

### Conclusions

After considering all the relevant factors, we conclude that employees represented by Local 724 are entitled to perform the work in dispute. We reach this conclusion by relying on the factors of employer preference, past practice, economy and efficiency, and gain or loss of employment. In making this determination, we are awarding the work to employees represented by Local 724 IAM, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

### DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees of Holt Cargo Systems, Inc., represented by Local Lodge 724 of the International Association of Machinists and Aerospace Workers, AFL-CIO, are entitled to perform the work of maintenance and repair of mechanical equipment for Holt Cargo Systems, Inc. at the Packer Avenue Marine Terminal in Philadelphia, Pennsylvania.